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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT TACOMA

13 CULLEN M. HANKERSON,
14 Plaintiff,

15 v.

16 PIERCE COUNTY, *et al.*,
17 Defendants.

CASE NO. C09-5306RBL
ORDER

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19 This Civil Rights Action has been referred to United States Magistrate Judge J. Richard
20 Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and 636 (b)(1)(B), and Local Magistrate Judge's
21 Rule MJR3 and MJR4. The Court, having reviewed plaintiff's application for IFP, complaint and
22 the balance of the record contained herein, does hereby find as follows:

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24 On June 30, 2009, the court granted plaintiff's application to proceed in forma pauperis.
25 Since that date, plaintiff has filed two motions for summary judgment (Docs. 7 & 12), as well as
26 several letters or requests. The court notes that the motions, like the Complaint in this matter,
have not been served on defendants.

1 Also, a review of plaintiff's complaint shows that the claims being made call into
2 question the validity of a pending criminal matter. Specifically, plaintiff raises claims regarding
3 the validity of statements made to support a finding of "probable cause", related to an arrest
4 and/or search and seizure. Plaintiff states that his case is pending in Pierce County Superior
5 Court under the following cause number: 09-1-00556-9. Complaint (Doc. 6) at 3. Plaintiff also
6 states that he is facing charges that could result in his incarceration for twenty years or more.
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8 *See* Doc. 8.

9 In June 1994, the United States Supreme Court held that "[e]ven a prisoner who has fully
10 exhausted available state remedies has no cause of action under § 1983 unless and until the
11 conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of
12 habeas corpus." Heck v. Humphrey, 512 U.S. 477, 489 (1994). The court added:

13 [A] § 1983 cause of action for damages attributable to an unconstitutional
14 conviction or sentence does not accrue until the conviction or sentence has been
15 invalidated.

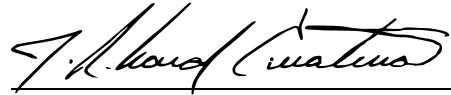
16 Id.

17 Plaintiff's claims call into question the legality of his arrest and, possibly, his pending
18 criminal trial. Plaintiff must first raise these claims in the state court action, or, possibly, in a
19 petition for writ of habeas corpus -- not a § 1983 civil rights claim for money damages. Thus,
20 this § 1983 claim for monetary damages is premature.
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22 Based on the forgoing findings, it is hereby ORDERED that **by no later than October 9,**
23 **2009**, Plaintiff shall either file an amended complaint, curing, if possible, the above noted
24 deficiencies, or show cause why this matter should not be summarily dismissed. If an amended
25 complaint is not timely filed or if plaintiff fails to adequately respond, the Court will recommend
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1 dismissal of this action as frivolous pursuant to 28 U.S.C. § 1915, and such dismissal will count
2 as a “strike” under 28 U.S.C. § 1915(g).

3 The Clerk is directed to send plaintiff a copy of this Order and the General Order
4 DATED this 2nd day of September, 2009.
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8 J. Richard Creatura
9 United States Magistrate Judge
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